Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Message Text

PAGE 01 STATE 228271

21
ORIGIN IO-13

INFO OCT-01 ISO-00 AF-08 ARA-06 EA-07 EUR-12 NEA-10 SCCT-01

CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03 NSAE-00 NSC-05

PA-01 PRS-01 SP-02 SS-15 USIA-06 FEA-01 ACDA-07 EB-07

NRC-05 OES-06 ERDA-05 /135 R

DRAFTED BY L/UNA:DSTEWART:IO/UNP:DCKURTZER:CB
APPROVED BY IO:JABAKER
IO/UNP:GBHELMAN
IO/SCT:LCAVANAUGH(INFO)
NEA/IAI:WBSMITH
---------- 001021
P R 151639Z SEP 76
FM SECSTATE WASHDC
TO AMEMBASSY BANGKOK PRIORITY
AMEMBASSY BERN PRIORITY
AMEMBASSY BOGOTA PRIORITY
AMEMBASSY BONN PRIORITY
AMEMBASSY BRUSSELS PRIORITY
AMEMBASSY CANBERRA PRIORITY
AMEMBASSY COPENHAGEN PRIORITY
AMEMBASSY DUBLIN PRIORITY
AMEMBASSY THE HAGUE PRIORITY
AMEMBASSY HELSINKI PRIORITY
AMEMBASSY LONDON PRIORITY
AMEMBASSY LUXEMBOURG PRIORITY
AMEMBASSY MADRID PRIORITY
AMEMBASSY MONTEVIDEO PRIORITY
AMEMBASSY OSLO PRIORITY
AMEMBASSY OTTAWA PRIORITY
AMEMBASSY PARIS PRIORITY
AMCONSUL RIO DE JANEIRO PRIORITY
AMEMBASSY ROME PRIORITY
AMEMBASSY SAN JOSE PRIORITY
AMEMBASSY SANTIAGO PRIORITY
AMEMBASSY STOCKHOLM PRIORITY
CONFIDENTIAL

PAGE 02 STATE 228271

AMEMBASSY WELLINGTON PRIORITY
INFO AMEMBASSY TEL AVI
USMISSION USUN NEW YORK
USMISSION IAEA VIENNA

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

C O N F I D E N T I A L STATE 228271

E.O. 11652:GDS

TAGS: IAEA, AORG, OCON

SUBJECT: PLO IN IAEA: LEGAL ARGUMENTS

REF: STATE 212234

1. SOME EMBASSIES HAVE INDICATED INTEREST IN AMPLIFICATION OF LEGAL ARGUMENT ALLUDED TO IN REFTEL. DEPT HAS PREPARED LEGAL BRIEF WHICH SUPPORTS OUR CONTENTION THAT PLO DOES NOT QUALIFY FOR OBSERVER OR CONSULTATIVE STATUS UNDER IAEA RULES OF PROCEDURE. THUS, WE CONTINUE TO PLAN VIGOROUS OPPOSITION TO PLO OBSERVER INVITATION, BOTH ON LEGAL AND POLITICAL GROUNDS. EXCERPTS FOLLOW FROM DEPT'S LEGAL BRIEF, AS WELL AS FROM OPINION ISSUED 1975 BY IAEA LEGAL DEPT.

2. FOR BONN, COPENHAGEN, THE HAGUE, LONDON, OTTAWA, HELSINKI: BECAUSE OF INTEREST SHOWN IN LEGAL ARGUMENT, EMBASSIES SHOULD PRESENT LEGAL BRIEFS VERBATIM IN FOLLOW-UP APPROACH. FOR OTHER ACTION ADDRESSEES: EMBASSIES MAY, AT THEIR DISCRETION, PRESENT VERBATIM TEXT OF LEGAL BRIEF OR SUMMARY IN FOLLOW-UP APPROACH. FYI: SCENARIO SEEMS TO POINT TO EXERCISING LEGAL CHALLENGE IN GENERAL CTTEE, WHICH DECIDES AGENDA. FAILING ACCEPTANCE OF US CHALLENGE, WE WILL PRESS POLITICAL AND LEGAL CHALLENGE ON FLOOR OF GENERAL CONFERENCE AND CALL FOR VOTE. END FYI.
3. EXCERP S FROM DEPT'S LEGAL BRIEF. BEGIN QUOTE:
THE STATUTE ITSELF CONTAINS REFERENCE TO OR PROVISION FOR OBSERVERS OR OBSERVER MISSIONS. UNDER ARTICLE IV, MEMBERSHIP IS LIMITED TO "STATES," AND NOTHING IN ARTICLE V, WHICH PROVIDES FOR "A GENERAL CONFERENCE CONSISTING OF REPRESENTATIVES OF ALL MEMBERS," AUTHORIZES CONFIDENTIAL

PAGE 03 STATE 228271

ANY OTHER FORM OF PARTICIPATION. THE PLO IS NOT, AND DOES NOT CLAIM TO BE, A STATE; ACCORDINGLY, THE STATUTE OFFERS NO EXPLICIT BASIS FOR ITS PARTICIPATION IN THE AGENCY AS A WHOLE.

CHAPTER V OF THE RULES OF PROCEDURE OF THE GENERAL CONFERENCE PERMITS PARTICIPATION BY REPRESENTATIVES OF FOUR CATEGORIES OF NON-MEMBERS. RULES 30, 31 AND 32 (A) ARE CLEARLY INAPPLICABLE TO THE PLO, AS THEY INVOLVE STATES, UN REPRESENTATIVES AND INTERNATIONAL ORGANIZATION REPRESENTATIVES. THE ONLY BASIS FOR GRANTING OBSERVER STATUS TO THE PLO COULD BE UNDER RULE 32(B), WHICH STATES THAT "REPRESENTATIVES OF NON-GOVERNMENTAL

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

ORGANIZATIONS ENJOYING CONSULTATIVE STATUS WITH THE AGENCY MAY ATTEND THE GENERAL CONFERENCE IN ACCORDANCE WITH SUCH RULES AS THE GENERAL CONFERENCE HAS APPROVED." HOWEVER, AS THE AGENCY'S OWN LEGAL STAFF OPINED LAST SEPTEMBER, THE PLO IS NOT A "NON-GOVERNMENTAL ORGANIZATION"; ACCORDINGLY, IT DOES NOT FALL WITHIN THE AMBIT OF THIS RULE. MOREOVER, IT DOES NOT NOW ENJOY CONSULTATIVE STATUS WITH THE AGENCY, AND, AS DISCUSSED BELOW, IT WOULD NOT QUALIFY FOR SUCH STATUS UNDER THE RULES ON THE CONSULTATIVE STATUS OF NON-GOVERNMENT ORGANIZATIONS WITH THE AGENCY (INFCIRC/14), APPROVED BY THE GENERAL CONFERENCE IN 1958.

WHILE ACKNOWLEDGING THAT SINCE THE PLO IS NOT A NON-GOVERNMENTAL ORGANIZATION IT CANNOT INVOKE THE PROVISIONS OF CHAPTER V, THE NOTE BY THE AGENCY'S LEGAL STAFF ASSERTS THAT RULE 2 "USES LANGUAGE QUITE BROAD ENOUGH TO INCLUDE AN ORGANIZATION SUCH AS THE PLO." RULE 2 SIMPLY STATES THAT THE DIRECTOR GENERAL SHALL GIVE NOTICE, AT LEAST 90 DAYS IN ADVANCE OF EACH REGULAR SESSION, OF THE OPENING DATE, PLACE AND EXPECTED DURATION THEREOF, TO INTER ALIA "SUCH OTHER ORGANIZATIONS AS THE GENERAL CONFERENCE AND BOARD OF GOVERNORS MAY FROM TIME TO TIME DECIDE." THE IMPLICATION IS THAT OBSERVER STATUS MAY BE GRANTED TO THE PLO SIMPLY BY A (MAJORITY OR CONSENSUS) DECISION OF THE GENERAL CONFERENCE TO SEND IT NOTIFICATION OF, AND THE PROVISIONAL AGENDA FOR, A FORTHCOMING SESSION. ALTHOUGH CONFIDENTIAL

"SUCH OTHER ORGANIZATIONS" CAN BE READ TO INCLUDE THE PLO, IT IS A PAINFULLY STRAINED AND THOROUGHLY INAPPROPRIATE INTERPRETATION TO FIND THE GENERAL CONFERENCE'S POWER TO GRANT OBSERVER STATUS IN A PROVISION MERELY INSTRUCTING THE DIRECTOR GENERAL TO PERFORM A SIMPLE ADMINISTRATIVE FUNCTION. NOTIFICATION DOES NOT NECESSARILY MEAN INVITATION, AND THE PRESENCE ELSEWHERE OF RULES AND PROCEDURES EXPLICITLY PROVIDING FOR NON-MEMBER REPRESENTATION AND CONSULTATIVE STATUS MUST BE TAKEN TO EXCLUDE SUCH A PERMISSIVE READING. THE BETTER INTERPRETATION IS THAT THE RULE PROVIDES NO ADDITIONAL AUTHORITY TO INVITE BUT REFERS ONLY TO "SUCH OTHER ORGANIZATIONS AS THE GENERAL CONFERENCE AND BOARD OF GOVERNORS MAY FROM TIME TO TIME DECIDE" IN ACCORDANCE WITH THE OTHER RELEVANT RULES OF PROCEDURE.

THE RULES OF PROCEDURE FOR THE GENERAL CONFERENCE SET FORTH SPECIFICALLY ENNUMERATED CATEGORIES AND PROCEDURES FOR INVITATIONS. RELIANCE ON THE NOTIFICATION PROVISIONS OF RULE 2 FOR AUTHORITY TO INVITE OBSERVERS RENDERS THOSE RULES A VIRTUAL NULLITY.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

ASSUMING, DESPITE THE OPINION OF THE AGENCY'S LEGAL STAFF, THAT THE PLO COULD BE CHARACTERIZED AS A NON-GOVERNMENTAL ORGANIZATION FOR PURPOSES OF RULE 32(B), IT COULD NOT SATISFY THE REQUIREMENTS OF THE RULES ON THE CONSULTATIVE STATUS OF NON-GOVERNMENTAL ORGANIZATIONS WITH THE AGENCY.

PARA 1 OF THOSE RULES SAYS THE OBJECTIVES OF CONSULTATIVE STATUS SHOULD BE TO SECURE "EXPERT INFORMATION" FROM ORGANIZATIONS WITH "SPECIAL COMPETENCE" IN AN IAEA-RELATED FIELD, AND TO ENABLE THOSE ORGANIZATIONS WHOSE WORK IS "RELEVANT TO THAT" OF THE IAEA TO EXPRESS THEIR VIEWS.

IT WOULD SEEM CLEAR THAT THE PLO HAS NO "EXPERT INFORMATION" OR "SPECIAL COMPETENCE" TO OFFER THE AGENCY, NOR DOES IT REPRESENT ANY "IMPORTANT GROUP WHOSE WORK IS RELEVANT TO THAT OF THE AGENCY." GRANTING IT CONFIDENTIAL

PAGE 05 STATE 228271

OBSERVER STATUS WOULD IN NO WAY FURTHER THE WORK OF THE AGENCY AND ACCORDINGLY WOULD BE INCONSISTENT WITH THE OBJECTIVES STATED IN THIS PARAGRAPH.

PARAGRAPH 2 SPECIFIES FIVE "PRINCIPLES AND CONDITIONS" WHICH "SHALL BE APPLIED BY THE AGENCY WHEN CONSIDERING WHETHER TO GRANT CONSULTATIVE STATUS":

AMONG THESE CRITERIA ARE THE FOLLOWING: (A) ORGANIZATION SHOULD BE ABLE TO MAKE A DIRECT CONTRIBUTION TO IAEA WORK; (B) ORGANIZATION'S AIMS AND PURPOSES SHOULD CONFORM TO THOSE OF THE AGENCY; (C) ORGANIZATION SHOULD HAVE ESTABLISHED HEADQUARTERS AND AUTHORITY TO SPEAK FOR ITS MEMBERS; (D) ORGANIZATION SHOULD BE INTERNATIONAL NGO, WITH MINOR EXCEPTIONS.

GIVEN THE NON-DISCRETIONARY WORDING OF THIS PARAGRAPH AND THE CLEAR INABILITY OF THE PLO TO MEET THE CRITERIA STATED THEREIN, A STRONG ARGUMENT CAN BE MADE THAT THE GENERAL CONFERENCE IS BOUND BY ITS OWN RULES TO DECLINE TO GRANT OBSERVER STATUS TO THE PLO. THE AGENCY'S LEGAL STAFF ACKNOWLEDGED THE RELEVANCE OF THESE CRITERIA IN ITS SEPTEMBER NOTE. THE PROCEDURE FOR OBTAINING CONSULTATIVE STATUS IS SET FORTH IN PARAGRAPH 9 OF THE RULES. THE PROCEDURE SUGGESTED BY THE AGENCY'S LEGAL STAFF, AND THE ONE WHICH IRAQ EVIDENTLY SEEKS TO FOLLOW (NAMELY, SIMPLY REQUESTING UNDER RULES 12 OR 15 THAT THE INVITATION TO THE PLO BE INCLUDED AS AN ITEM ON THE PROVISIONAL AGENDA) CAN ONLY HAVE THE EFFECT OF CIRCUMVENTING AND THEREFORE NULLIFYING THE PROCEDURE ESTABLISHED IN PARAGRAPH 9.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

PLO PARTICIPATION IN OTHER AGENCIES. PURSUANT TO GA RESOLUTION 3237 (XXIX) OF NOVEMBER 22, 1974, THE PLO HAS BEEN INVITED TO PARTICIPATE AS AN OBSERVER IN THE WORK OF THE GENERAL ASSEMBLY AND OF "ALL INTERNATIONAL CONFERENCES CONVENED UNDER THE AUSPICES OF THE GENERAL ASSEMBLY." AS THE NOTE BY THE AGENCY'S LEGAL STAFF POINTS OUT, HOWEVER, THAT RESOLUTION IS IN NO WAY BINDING ON THE IAEA. THE PROVISION IN THE AGENCY'S RELATIONSHIP AGREEMENT WITH THE UNITED NATIONS WHICH CONFIDENTIAL

REQUIRES IT TO "CONSIDER ANY RESOLUTION RELATING TO THE AGENCY ADOPTED BY THE GENERAL ASSEMBLY" IS NOT APPLICABLE IN THIS SITUATION.

MOREOVER, ADMISSION OF THE PLO AS AN OBSERVER BY OTHER AGENCIES OR GROUPS WITHIN THE UN FAMILY DOES NOT CONSTITUTE AN AUTHORITATIVE PRECEDENT FOR THE IAEA, WHICH MUST ACT AS AN AUTONOMOUS AGENCY IN ACCORDANCE WITH ITS OWN PRINCIPLES AND RULES OF PROCEDURE. END QUOTE.

4. EXCERPTS FROM IAEA LEGAL BRIEF. BEGIN QUOTE:

THE PLO IS NOT A STATE. IT IS NOT AN INTERNATIONAL (OR INTERGOVERNMENTAL) ORGANIZATION (IGO). AND IT IS NOT A NON-GOVERNMENTAL ORGANIZATION (NGO) AS THAT TERM IS UNDERSTOOD IN INTERNATIONAL LAW.

IN TERMS OF THE AGENCY'S EXPERIENCE WITH NGO'S, THE AGENCY HAS CONSISTENTLY APPLIED THE PROVISIONS OF PART II OF THE RULES ON THE CONSULTATIVE STATUS OF NON-GOVERNMENTAL ORGANIZATIONS WITH THE AGENCY (INFCIRC/14). THE GENERAL CONFERENCE MAY WISH TO CONSIDER THE RELEVANCE OF CRITERIA (SUCH AS A DIRECT RELATIONSHIP BETWEEN THE WORK OF THE ORGANIZATION CONCERNED AND THAT OF THE AGENCY, AND THE ABILITY OF THE ORGANIZATION CONCERNED TO MAKE A SIGNIFICANT CONTRIBUTION TO THE AGENCY'S WORK) NOT ONLY TO ASSESSING WHETHER A PARTICULAR NGO SHOULD HAVE CONSULTATIVE STATUS BUT ALSO TO JUDGING THE MERITS OF AN APPLICATION BY ANY OTHER GROUP OF PERSONS FOR OBSERVER STATUS AT ITS SESSIONS.

CHAPTER V OF THE RULES OF PROCEDURE OF THE GENERAL CONFERENCE (GC(XIX)/INF/152) HEADED "REPRESENTATION OF OTHER ORGANIZATIONS AND OF STATES NOT MEMBERS OF THE AGENCY", REFERS ONLY TO STATES, INTERNATIONAL ORGANIZATIONS AND NON-GOVERNMENTAL ORGANIZATIONS. ONE PROVISION IN THE RULES OF PROCEDURE HOWEVER GOES MUCH FURTHER AND USES LANGUAGE QUITE BROAD ENOUGH TO INCLUDE AN ORGANIZATION SUCH AS THE PLO. RULE 2 PROVIDES THAT THE DIRECTOR GENERAL SHALL, AT LEAST 90 DAYS IN ADVANCE OF

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

EACH REGULAR SESSION OF THE GENERAL CONFERENCE, NOTIFY
CONFIDENTIAL

PAGE 07 STATE 228271

ITS OPENING DATE, PLACE AND EXPECTED DURATION TO, INTER ALIA, "SUCH OTHER ORGANIZATIONS AS THE GENERAL CONFERENCE OR THE BOARD OF GOVERNORS MAY FROM TIME TO TIME DECIDE". ALTHOUGH NOTIFICATION IS THUS GIVEN ONLY TO ENTITIES ENTITLED TO ATTEND, THE LANGUAGE USED CLEARLY ENVISAGES -- OR AT LEAST COMPREHENDS -- THE POSSIBILITY OF SUCH ENTITLEMENT IN RESPECT OF ENTITIES WHICH ARE NOT WITHIN THE CATEGORIES RECOGNIZED EXPLICITLY ELSEWHERE IN RULE 2.

EVIDENCE OF A CERTAIN TREND IS AVAILABLE IN THE FORM OF A NUMBER OF RESOLUTIONS ADOPTED IN THE RECENT PAST BY THE UN GENERAL ASSEMBLY AND OTHER BODIES INVITING THE PLO TO PARTICIPATE IN THEIR SESSIONS AND WORK AS AN OBSERVER, INCLUDING UN GENERAL ASSEMBLY RESOLUTION 3237 OF 22 NOVEMBER 1974 TO WHICH THE REPRESENTATIVE OF SUDAN REFERRED AT THE JUNE MEETING OF THE BOARD (GOV/OR. 480, PARAGRAPH 25). THE GENERAL CONFERENCE MAY WISH TO BE ASSURED THAT IT IS UNDER NO OBLIGATION TO "TAKE INTO ACCOUNT THE PROVISIONS" OF THAT RESOLUTION. THE GENERAL CONFERENCE OF THE AGENCY DOES NOT FALL WITHIN ANY OF THE CATEGORIES COVERED BY THAT RESOLUTION. UN RESOLUTION 3237 (XIX) DOES NOT RELATE TO THE AGENCY IN THE SENSE OF ARTICLE V OF THE RELATIONSHIP AGREEMENT BETWEEN THE UNITED NATIONS AND THE AGENCY, WHICH READS IN PART AS FOLLOWS (INFCIRC/11, PAGE 3): "THE AGENCY SHALL CONSIDER ANY RESOLUTION RELATING TO THE AGENCY ADOPTED BY THE GENERAL ASSEMBLY OR BY A COUNCIL OF THE UNITED NATIONS". EVEN IF THIS WERE A CASE OF DOUBT, THERE IS NO PRESUMPTION IN FAVOUR OF AN OBLIGATION ON THE PART OF THE AGENCY TO CONSIDER SUCH A RESOLUTION. INDEED THE WORDING OF ARTICLES I (2) OF THE RELATIONSHIP AGREEMENT REFERRED TO ABOVE SUGGESTS THAT THE PRESUMPTION GOES THE OTHER WAY. IT READS AS FOLLOWS: "THE UNITED NATIONS RECOGNIZES THAT THE AGENCY, BY VIRTUE OF ITS INTER-GOVERNMENTAL CHARACTER AND INTERNATIONAL RESPONSIBILITIES, WILL FUNCTION UNDER ITS STATUTE AS AN AUTONOMOUS INTERNATIONAL ORGANIZATION IN THE WORKING RELATIONSHIP WITH THE UNITED NATIONS ESTABLISHED BY THIS AGREEMENT." END QUOTE.

5. TEXT OF LEGAL BRIEFS ARE UNCLASSIFIED.
CONFIDENTIAL

PAGE 08 STATE 228271

6. ADDRESSEES SHOULD NOTE THAT IAEA LEGAL BRIEF WHILE PARALLELING OUR VIEWS IN MOST RESPECTS, GIVES MORE PERMISSIVE INTERPRETATION OF RULE 2 THAT WE BELIEVE CORRECT. WE DO NOT BELIEVE IT WAS INTENTION

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

OF RULE 2 TO AUTHORIZE D-G TO INVITE SIMPLY BY
NOTIFICATION POLITICAL ENTITIES SUCH AS THE
PLO.

ROBINSON

CONFIDENTIAL

PAGE 01 STATE 228271

14
ORIGIN IO-03

INFO OCT-01 ISO-00 SSO-00 /004 R

66011
DRAFTED BY:IO/SCT:JPTREVITHICK
APPROVED BY:IO:JACAHILL
IO/UNP:RMMAXIM
---------- 070988
O 180120Z SEP 76
FM SECSTATE WASHDC
TO AMEMBASSY BRASILIA IMMEDIATE
INFO AMCONSUL RIO DE JANEIRO IMMEDIATE IMMEDIATE

C O N F I D E N T I A L STATE 228271

RIO FOR USDEL IAEA GEN CONF

FOLLOWING REPEAT STATE 228271 DACTION BANGKOK, BERN, BOGOTA,
BONN, BRUSSELS, CANBERRA, COPENHAGEN, DUBLIN, THE HAGUE,
HLLSINKI, LONDON, LUXEMBOURG, MADRID, MONTEVIDEO, OSLO,
OTTAWA, PARIS, RIO DE JANEIRO, ROME, SAN JOSE, SANTIAGO,
STOCKHOLM, WELLINGOON, TEL AVI, USUN NEWYORK, IAEA VIENNA
DTD 15 SEP 76.

QTE: C O N F I D E N T I A L STATE 228271

E.O. 11652:GDS

TAGS: IAEA, AORG, OCON

SUBJECT: PLO IN IAEA: LEGAL ARGUMENTS

REF: STATE 212234

1. SOME EMBASSIES HAVE INDICATED INTEREST IN AMPLIFICATION
OF LEGAL ARGUMENT ALLUDED TO IN REFTEL. DEPT HAS PREPARED
LEGAL BRIEF WHICH SUPPORTS OUR CONTENTION THAT PLO DOES
NOT QUALIFY FOR OBSERVER OR CONSULTATIVE STATUS UNDER IAEA
RULES OF PROCEDURE. THUS, WE CONTINUE TO PLAN VIGOROUS
CONFIDENTIAL

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

OPPOSITION TO PLO OBSERVER INVITATION, BOTH ON LEGAL AND POLITICAL GROUNDS. EXCERPTS FOLLOW FROM DEPT'S LEGAL BRIEF, AS WELL AS FROM OPINION ISSUED 1975 BY IAEA LEGAL DEPT.

2. FOR BONN, COPENHAGEN, THE HAGUE, LONDON, OTTAWA, HELSINKI: BECAUSE OF INTEREST SHOWN IN LEGAL ARGUMENT, EMBASSIES SHOULD PRESENT LEGAL BRIEFS VERBATIM IN FOLLOW-UP APPROACH. FOR OTHER ACTION ADDRESSEES: EMBASSIES MAY, AT THEIR DISCRETION, PRESENT VERBATIM TEXT OF LEGAL BRIEF OR SUMMARY IN FOLLOW-UP APPROACH. FYI: SCENARIO SEEMS TO POINT TO EXERCISING LEGAL CHALLENGE IN GENERAL CTTEE, WHICH DECIDES AGENDA. FAILING ACCEPTANCE OF US CHALLENGE, WE WILL PRESS POLITICAL AND LEGAL CHALLENGE ON FLOOR OF GENERAL CONFERENCE AND CALL FOR VOTE. END FYI.
3. EXCERP S FROM DEPT'S LEGAL BRIEF. BEGIN QUOTE:
THE STATUTE ITSELF CONTAINS REFERENCE TO OR PROVISION FOR OBSERVERS OR OBSERVER MISSIONS. UNDER ARTICLE IV, MEMBERSHIP IS LIMITED TO "STATES," AND NOTHING IN ARTICLE V, WHICH PROVIDES FOR "A GENERAL CONFERENCE CONSISTING OF REPRESENTATIVES OF ALL MEMBERS," AUTHORIZES ANY OTHER FORM OF PARTICIPATION. THE PLO IS NOT, AND DOES NOT CLAIM TO BE, A STATE; ACCORDINGLY, THE STATUTE OFFERS NO EXPLICIT BASIS FOR ITS PARTICIPATION IN THE AGENCY AS A WHOLE.

CHAPTER V OF THE RULES OF PROCEDURE OF THE GENERAL CONFERENCE PERMITS PARTICIPATION BY REPRESENTATIVES OF FOUR CATEGORIES OF NON-MEMBERS. RULES 30, 31 AND 32 (A) ARE CLEARLY INAPPLICABLE TO THE PLO, AS THEY INVOLVE STATES, UN REPRESENTATIVES AND INTERNATIONAL ORGANIZATION REPRESENTATIVES. THE ONLY BASIS FOR GRANTING OBSERVER STATUS TO THE PLO COULD BE UNDER RULE 32(B), WHICH STATES THAT "REPRESENTATIVES OF NON-GOVERNMENTAL ORGANIZATIONS ENJOYING CONSULTATIVE STATUS WITH THE AGENCY MAY ATTEND THE GENERAL CONFERENCE IN ACCORDANCE WITH SUCH RULES AS THE GENERAL CONFERENCE HAS APPROVED." HOWEVER, AS THE AGENCY'S OWN LEGAL STAFF OPINED LAST SEPTEMBER, THE PLO IS NOT A "NON-GOVERNMENTAL ORGANIZATION"; ACCORDINGLY, IT DOES NOT FALL WITHIN THE AMBIT OF THIS RULE. MOREOVER, IT DOES NOT NOW ENJOY CONSULTATIVE CONFIDENTIAL

STATUS WITH THE AGENCY, AND, AS DISCUSSED BELOW, IT WOULD NOT QUALIFY FOR SUCH STATUS UNDER THE RULES ON THE CONSULTATIVE STATUS OF NON-GOVERNMENT ORGANIZATIONS WITH THE AGENCY (INFCIRC/14), APPROVED BY THE GENERAL CONFERENCE IN 1958.

WHILE ACKNOWLEDGING THAT SINCE THE PLO IS NOT A NON-

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

GOVERNMENTAL ORGANIZATION IT CANNOT INVOKE THE PRO-
VISIONS OF CHAPTER V, THE NOTE BY THE AGENCY'S LEGAL
STAFF ASSERTS THAT RULE 2 "USES LANGUAGE QUITE BROAD
ENOUGH TO INCLUDE AN ORGANIZATION SUCH AS THE PLO."
RULE 2 SIMPLY STATES THAT THE DIRECTOR GENERAL SHALL
GIVE NOTICE, AT LEAST 90 DAYS IN ADVANCE OF EACH
REGULAR SESSION, OF THE OPENING DATE, PLACE AND EXPECTED
DURATION THEREOF, TO INTER ALIA "SUCH OTHER ORGANIZATIONS
AS THE GENERAL CONFERENCE AND BOARD OF GOVERNORS MAY
FROM TIME TO TIME DECIDE." THE IMPLICATION IS THAT
OBSERVER STATUS MAY BE GRANTED TO THE PLO SIMPLY BY A
(MAJORITY OR CONSENSUS) DECISION OF THE GENERAL CON-
FERENCE TO SEND IT NOTIFICATION OF, AND THE PROVISIONAL
AGENDA FOR, A FORTHCOMING SESSION. ALTHOUGH
"SUCH OTHER ORGANIZATIONS" CAN BE READ TO INCLUDE THE
PLO, IT IS A PAINFULLY STRAINED AND THOROUGHLY IN-
APPROPRIATE INTERPRETATION TO FIND THE GENERAL
CONFERENCE'S POWER TO GRANT OBSERVER STATUS IN A
PROVISION MERELY INSTRUCTING THE DIRECTOR GENERAL
TO PERFORM A SIMPLE ADMINISTRATIVE FUNCTION. NOTIFICA-
TION DOES NOT NECESSARILY MEAN INVITATION, AND THE
PRESENCE ELSEWHERE OF RULES AND PROCEDURES EXPLICITLY
PROVIDING FOR NON-MEMBER REPRESENTATION AND CONSULTA-
TIVE STATUS MUST BE TAKEN TO EXCLUDE SUCH A PERMISSIVE
READING. THE BETTER INTERPRETATION IS THAT THE RULE
PROVIDES NO ADDITIONAL AUTHORITY TO INVITE BUT REFERS
ONLY TO "SUCH OTHER ORGANIZATIONS AS THE GENERAL
CONFERENCE AND BOARD OF GOVERNORS MAY FROM TIME TO
TIME DECIDE" IN ACCORDANCE WITH THE OTHER RELEVANT
RULES OF PROCEDURE.

THE RULES OF PROCEDURE FOR THE GENERAL CONFERENCE SET
FORTH SPECIFICALLY ENNUMERATED CATEGORIES AND PROCEDURES
FOR INVITATIONS. RELIANCE ON THE NOTIFICATION PRO-
CONFIDENTIAL

VISIONS OF RULE 2 FOR AUTHORITY TO INVITE OBSERVERS
RENDERS THOSE RULES A VIRTUAL NULLITY.

ASSUMING, DESPITE THE OPINION OF THE AGENCY'S LEGAL
STAFF, THAT THE PLO COULD BE CHARACTERIZED AS A NON-
GOVERNMENTAL ORGANIZATION FOR PURPOSES OF RULE 32(B),
IT COULD NOT SATISFY THE REQUIREMENTS OF THE RULES ON
THE CONSULTATIVE STATUS OF NON-GOVERNMENTAL ORGANIZA-
TIONS WITH THE AGENCY.

PARA 1 OF THOSE RULES SAYS THE OBJECTIVES OF CONSULTA-
TIVE STATUS SHOULD BE TO SECURE "EXPERT INFORMATION"
FROM ORGANIZATIONS WITH "SPECIAL COMPETENCE" IN AN
IAEA-RELATED FIELD, AND TO ENABLE THOSE ORGANIZATIONS
WHOSE WORK IS "RELEVANT TO THAT" OF THE IAEA TO EXPRESS
THEIR VIEWS.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

IT WOULD SEEM CLEAR THAT THE PLO HAS NO "EXPERT INFORMATION" OR "SPECIAL COMPETENCE" TO OFFER THE AGENCY, NOR DOES IT REPRESENT ANY "IMPORTANT GROUP WHOSE WORK IS RELEVANT TO THAT OF THE AGENCY." GRANTING IT OBSERVER STATUS WOULD IN NO WAY FURTHER THE WORK OF THE AGENCY AND ACCORDINGLY WOULD BE INCONSISTENT WITH THE OBJECTIVES STATED IN THIS PARAGRAPH.

PARAGRAPH 2 SPECIFIES FIVE "PRINCIPLES AND CONDITIONS" WHICH "SHALL BE APPLIED BY THE AGENCY WHEN CONSIDERING WHETHER TO GRANT CONSULTATIVE STATUS":

AMONG THESE CRITERIA ARE THE FOLLOWING: (A) ORGANIZATION SHOULD BE ABLE TO MAKE A DIRECT CONTRIBUTION TO IAEA WORK; (B) ORGANIZATION'S AIMS AND PURPOSES SHOULD CONFORM TO THOSE OF THE AGENCY; (C) ORGANIZATION SHOULD HAVE ESTABLISHED HEADQUARTERS AND AUTHORITY TO SPEAK FOR ITS MEMBERS; (D) ORGANIZATION SHOULD BE INTERNATIONAL NGO, WITH MINOR EXCEPTIONS.

GIVEN THE NON-DISCRETIONARY WORDING OF THIS PARAGRAPH AND THE CLEAR INABILITY OF THE PLO TO MEET THE CRITERIA STATED THEREIN, A STRONG ARGUMENT CAN BE MADE THAT THE GENERAL CONFERENCE IS BOUND BY ITS OWN CONFIDENTIAL

RULES TO DECLINE TO GRANT OBSERVER STATUS TO THE PLO. THE AGENCY'S LEGAL STAFF ACKNOWLEDGED THE RELEVANCE OF THESE CRITERIA IN ITS SEPTEMBER NOTE. THE PROCEDURE FOR OBTAINING CONSULTATIVE STATUS IS SET FORTH IN PARAGRAPH 9 OF THE RULES. THE PROCEDURE SUGGESTED BY THE AGENCY'S LEGAL STAFF, AND THE ONE WHICH IRAQ EVIDENTLY SEEKS TO FOLLOW (NAMELY, SIMPLY REQUESTING UNDER RULES 12 OR 15 THAT THE INVITATION TO THE PLO BE INCLUDED AS AN ITEM ON THE PROVISIONAL AGENDA) CAN ONLY HAVE THE EFFECT OF CIRCUMVENTING AND THEREFORE NULLIFYING THE PROCEDURE ESTABLISHED IN PARAGRAPH 9.

PLO PARTICIPATION IN OTHER AGENCIES. PURSUANT TO GA RESOLUTION 3237 (XXIX) OF NOVEMBER 22, 1974, THE PLO HAS BEEN INVITED TO PARTICIPATE AS AN OBSERVER IN THE WORK OF THE GENERAL ASSEMBLY AND OF "ALL INTERNATIONAL CONFERENCES CONVENED UNDER THE AUSPICES OF THE GENERAL ASSEMBLY." AS THE NOTE BY THE AGENCY'S LEGAL STAFF POINTS OUT, HOWEVER, THAT RESOLUTION IS IN NO WAY BINDING ON THE IAEA. THE PROVISION IN THE AGENCY'S RELATIONSHIP AGREEMENT WITH THE UNITED NATIONS WHICH REQUIRES IT TO "CONSIDER ANY RESOLUTION RELATING TO THE AGENCY ADOPTED BY THE GENERAL ASSEMBLY" IS NOT APPLICABLE IN THIS SITUATION.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

MOREOVER, ADMISSION OF THE PLO AS AN OBSERVER BY OTHER AGENCIES OR GROUPS WITHIN THE UN FAMILY DOES NOT CONSTITUTE AN AUTHORITATIVE PRECEDENT FOR THE IAEA, WHICH MUST ACT AS AN AUTONOMOUS AGENCY IN ACCORDANCE WITH ITS OWN PRINCIPLES AND RULES OF PROCEDURE. END QUOTE.

4. EXCERPTS FROM IAEA LEGAL BRIEF. BEGIN QUOTE:

THE PLO IS NOT A STATE. IT IS NOT AN INTERNATIONAL (OR INTERGOVERNMENTAL) ORGANIZATION (IGO). AND IT IS NOT A NON-GOVERNMENTAL ORGANIZATION (NGO) AS THAT TERM IS UNDERSTOOD IN INTERNATIONAL LAW.

IN TERMS OF THE AGENCY'S EXPERIENCE WITH NGO'S, THE AGENCY HAS CONSISTENTLY APPLIED THE PROVISIONS OF PART II OF THE RULES ON THE CONSULTATIVE STATUS OF NON-CONFIDENTIAL

PAGE 06 STATE 228271

GOVERNMENTAL ORGANIZATIONS WITH THE AGENCY (INFCIRC/14). THE GENERAL CONFERENCE MAY WISH TO CONSIDER THE RELEVANCE OF CRITERIA (SUCH AS A DIRECT RELATIONSHIP BETWEEN THE WORK OF THE ORGANIZATION CONCERNED AND THAT OF THE AGENCY, AND THE ABILITY OF THE ORGANIZATION CONCERNED TO MAKE A SIGNIFICANT CONTRIBUTION TO THE AGENCY'S WORK) NOT ONLY TO ASSESSING WHETHER A PARTICULAR NGO SHOULD HAVE CONSULTATIVE STATUS BUT ALSO TO JUDGING THE MERITS OF AN APPLICATION BY ANY OTHER GROUP OF PERSONS FOR OBSERVER STATUS AT ITS SESSIONS.

CHAPTER V OF THE RULES OF PROCEDURE OF THE GENERAL CONFERENCE (GC(XIX)/INF/152) HEADED "REPRESENTATION OF OTHER ORGANIZATIONS AND OF STATES NOT MEMBERS OF THE AGENCY", REFERS ONLY TO STATES, INTERNATIONAL ORGANIZATIONS AND NON-GOVERNMENTAL ORGANIZATIONS. ONE PROVISION IN THE RULES OF PROCEDURE HOWEVER GOES MUCH FURTHER AND USES LANGUAGE QUITE BROAD ENOUGH TO INCLUDE AN ORGANIZATION SUCH AS THE PLO. RULE 2 PROVIDES THAT THE DIRECTOR GENERAL SHALL, AT LEAST 90 DAYS IN ADVANCE OF EACH REGULAR SESSION OF THE GENERAL CONFERENCE, NOTIFY ITS OPENING DATE, PLACE AND EXPECTED DURATION TO, INTER ALIA, "SUCH OTHER ORGANIZATIONS AS THE GENERAL CONFERENCE OR THE BOARD OF GOVERNORS MAY FROM TIME TO TIME DECIDE". ALTHOUGH NOTIFICATION IS THUS GIVEN ONLY TO ENTITIES ENTITLED TO ATTEND, THE LANGUAGE USED CLEARLY ENVISAGES -- OR AT LEAST COMPREHENDS -- THE POSSIBILITY OF SUCH ENTITLEMENT IN RESPECT OF ENTITIES WHICH ARE NOT WITHIN THE CATEGORIES RECOGNIZED EXPLICITLY ELSEWHERE IN RULE 2.

EVIDENCE OF A CERTAIN TREND IS AVAILABLE IN THE FORM OF A NUMBER OF RESOLUTIONS ADOPTED IN THE RECENT PAST BY THE UN GENERAL ASSEMBLY AND OTHER BODIES INVITING THE PLO TO PARTICIPATE IN THEIR SESSIONS AND WORK AS AN

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

OBSERVER, INCLUDING UN GENERAL ASSEMBLY RESOLUTION 3237
OF 22 NOVEMBER 1974 TO WHICH THE REPRESENTATIVE
OF SUDAN REFERRED AT THE JUNE MEETING OF THE BOARD
(GOV/OR. 480, PARAGRAPH 25). THE GENERAL CONFERENCE
MAY WISH TO BE ASSURED THAT IT IS UNDER NO OBLIGATION
TO "TAKE INTO ACCOUNT THE PROVISIONS" OF THAT RESOLUTION.
THE GENERAL CONFERENCE OF THE AGENCY DOES NOT FALL WITHIN
CONFIDENTIAL

ANY OF THE CATEGORIES COVERED BY THAT RESOLUTION. UN
RESOLUTION 3237 (XIX) DOES NOT RELATE TO THE AGENCY IN
THE SENSE OF ARTICLE V OF THE RELATIONSHIP AGREEMENT
BETWEEN THE UNITED NATIONS AND THE AGENCY, WHICH READS
IN PART AS FOLLOWS (INFCIRC/11, PAGE 3): "THE AGENCY
SHALL CONSIDER ANY RESOLUTION RELATING TO THE AGENCY
ADOPTED BY THE GENERAL ASSEMBLY OR BY A COUNCIL OF THE
UNITED NATIONS". EVEN IF THIS WERE A CASE OF DOUBT,
THERE IS NO PRESUMPTION IN FAVOUR OF AN OBLIGATION ON
THE PART OF THE AGENCY TO CONSIDER SUCH A RESOLUTION.
INDEED THE WORDING OF ARTICLES I (2) OF THE RELATIONSHIP
AGREEMENT REFERRED TO ABOVE SUGGESTS THAT THE PRESUMPTION
GOES THE OTHER WAY. IT READS AS FOLLOWS: "THE UNITED
NATIONS RECOGNIZES THAT THE AGENCY, BY VIRTUE OF ITS
INTER-GOVERNMENTAL CHARACTER AND INTERNATIONAL
RESPONSIBILITIES, WILL FUNCTION UNDER ITS STATUTE AS AN
AUTONOMOUS INTERNATIONAL ORGANIZATION IN THE WORKING
RELATIONSHIP WITH THE UNITED NATIONS ESTABLISHED BY
THIS AGREEMENT." END QUOTE.

5. TEXT OF LEGAL BRIEFS ARE UNCLASSIFIED.

6. ADDRESSEES SHOULD NOTE THAT IAEA LEGAL BRIEF
WHILE PARALLELING OUR VIEWS IN MOST RESPECTS, GIVES
MORE PERMISSIVE INTERPRETATION OF RULE 2 THAT WE
BELIEVE CORRECT. WE DO NOT BELIEVE IT WAS INTENTION
OF RULE 2 TO AUTHORIZE D-G TO INVITE SIMPLY BY
NOTIFICATION POLITICAL ENTITIES SUCH AS THE
PLO.

ROBINSON UNQTE: ROBINSON

CONFIDENTIAL

<< END OF DOCUMENT >>

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Message Attributes

Automatic Decaptioning: X
Capture Date: 16 SEP 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 15 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE228271
Document Source: ADS
Document Unique ID: 00
Drafter: L/UNA:DSTEWART:IO/UNP:DCKURTZER:CB
Enclosure: n/a
Executive Order: 11652 GDS
Errors: n/a
Film Number: D760348-0881
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t197609108/baaaeqbl.tel
Line Count: 639
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN IO
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 12
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 23 MAR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23 MAR 2004 by ShawDG>; APPROVED <09 AUG 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PLO IN IAEA: LEGAL ARGUMENTS
TAGS: AORG, OCON, IAEA
To: BANGKOK
BERN
BOGOTA
BONN
BRUSSELS
CANBERRA

COPENHAGEN
DUBLIN
THE HAGUE
HELSINKI
LONDON
LUXEMBOURG
MADRID
MONTEVIDEO
OSLO
OTTAWA
PARIS
RIO DE JANEIRO
ROME
SAN JOSE
SANTIAGO
STOCKHOLM
WELLINGTON INFO TEL AVI
USUN N Y
IAEA VIENNA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006